

FCC MAIL SECTION

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Federal Communications Commission

DA 97-170

DISPATCHED

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 93-316
Table of Allotments,) RM-8403
FM Broadcast Stations.) RM-8576
(Douglas, Tifton and Unionville,)
Georgia))

MEMORANDUM OPINION AND ORDER

Adopted: January 24, 1997

Released: January 31, 1997

By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration a Petition for Reconsideration filed by Tifton Broadcasting Corporation ("petitioner or TBC"), licensee of Station WTIF(AM), Tifton, Georgia, of the Report and Order ("R&O"), 10 FCC Rcd 7706 (1995), in this proceeding.¹ Comments in opposition to the petition for reconsideration were filed by Orchon Media, Inc. ("Orchon"), permittee of Station WKZZ(FM), Douglas, Georgia. Petitioner filed reply comments to the opposition.

2. Background. In response to a petition for rulemaking filed by Orchon, the Notice of Proposed Rule Making ("Notice"), 9 FCC Rcd 154 (1994), in this proceeding proposed to substitute Channel 223C3 for 223A at Douglas, Georgia, to reallocate Channel 223C3 from Douglas to Unionville, Georgia, as a first local service, and to modify Orchon's construction permit for unbuilt Station WKZZ(FM) accordingly. The Notice had also requested Orchon to demonstrate that Unionville was a community for allotment purposes. In response, Orchon filed a counterproposal requesting the reallocation of Channel 223C3 to Tifton, Georgia instead of Unionville as originally proposed. Thereafter, the R&O, granted the counterproposal, finding that, under our change of community procedures, the upgrade and reallocation of unbuilt Station WKZZ(FM) to Tifton constituted a preferential arrangement of allotments because there would be a net service gain of 50,578 persons and several aural services would remain in Douglas.

3. Petition for Reconsideration. Petitioner argues that the R&O does not sufficiently demonstrate that the upgrade and reallocation of Channel 223 to Tifton constitutes a preferential arrangement of allotments. Rather, petitioner contends that the R&O relies upon the benefits of the upgrade and has not given a reasoned explanation for why petitioner's arguments were

¹Public Notice of the petition for reconsideration was given on September 26, 1995, Report No. 2099.

rejected. For example, the petitioner contends that the R&O did not address its contention that Orchon does not intend to serve Tifton but merely chose Tifton because, from its proposed transmitter site, the station would place a city-grade signal over Tifton but would not do so over Douglas. Further, the petitioner argues that the R&O and Orchon failed to demonstrate a reason for the reallocation or to offer evidence that it is not possible to upgrade the station at Douglas. Finally, petitioner argues that, in determining whether a preferential arrangement of allotments would occur, the R&O erred in comparing the retention of Channel 223A at Douglas with the reallocation of upgraded Channel 223C3 at Tifton. Rather, petitioner contends that the more accurate comparison should have been between allotting Channel 223C3 to either Douglas or Tifton.

4. Opposition/Reply. Orchon argues that the petition for reconsideration was filed for the purpose of delaying the implementation of service to the public. Orchon contends that the Commission did address petitioner's opposition to its counterproposal in this proceeding, noting the Commission's analysis in paragraphs seven and eight of the R&O. Orchon concludes that petitioner has raised no new arguments in its petition that have not been considered and rejected by the Commission. Orchon also notes that, to the extent petitioner would propose the upgrade of Channel 223 to Douglas rather than Tifton, the deadline for filing counterproposals has long passed. Orchon contends that the Commission has fully complied with its allotment standards in this proceeding, citing Blanchard, Louisiana and Stephen, Arkansas, FCC 95-327, released September 11, 1995. In reply, petitioner reiterates the arguments set forth in the petition for reconsideration.

5. Discussion. After careful consideration of the pleadings filed in this proceeding, we continue to believe that Orchon's counterproposal constitutes a preferential arrangement of allotments and that TBC's petition for reconsideration should be denied. However, we would like to clarify the basis for this conclusion. As we noted in the R&O, Orchon's proposal would not result in either the provision of a first or second reception service or a first local transmission service under the Commission's FM allotment priorities. Therefore, the proposal to upgrade and reallocate Channel 223C3 to Tifton was properly considered under priority four -- other public interest matters. In comparing the two communities under priority four, we note that both Douglas and Tifton receive more than five aural reception services and are thus considered well served from a reception service standpoint. As a result, we believe that this case turns upon a comparison of the number of transmission services in the two communities. In this regard, if Channel 223 were retained in Douglas as either a Class A or Class C3 channel, Douglas (population 10,464)² would continue to have five aural transmission services,³ and Tifton

² Population figures are taken from the 1990 U.S. Census.

³ The Douglas transmission services are Stations WDMG-AM, WDMG-FM, WOKA-AM, WOKA-FM, and Orchon's Station WKZZ(FM).

(population 14,215) would have three aural transmission services.⁴ However, by way of contrast, upgrading and reallocating Channel 223C3 to Tifton would equalize the number of transmission services between the communities. Given the difference in populations between the communities, we believe that this latter arrangement of allotments is preferable because the larger community of Tifton will now have the same number of transmission services as the smaller community of Douglas. Moreover, such an approach is consistent with precedent.⁵

6. Our conclusion that the counterproposal constitutes a preferential arrangement of allotments is further buttressed by the fact that Station WKZZ(FM) cannot upgrade on its current channel or on an adjacent channel in Douglas and that the reallocation enables the station to upgrade. As a result, there will be a net gain of service of 50,578 persons. While we recognize that there will be a loss of service to 29,537 persons, our engineering analysis confirms that all of these people still have at least five reception services and are considered well served.

7. To the extent that petitioner contends that the R&O did not explicitly address some of its arguments, we consider this to be harmless error that does not affect the outcome of this proceeding. Specifically, petitioner's argument that Orchon does not intend to serve Tifton is speculative and is not supported by any extrinsic evidence. Further, petitioner is incorrect in asserting that there is no reason for the reallocation of Station WKZZ(FM). As we indicated above, the station cannot upgrade at Douglas; and the upgrade and reallocation of the station will not only result in a preferential arrangement of transmission services but also will create a net gain in service. Finally, we disagree with petitioner's argument that the Commission should have compared the allotment of Channel 223C3 at Douglas with the reallocation of Channel 223C3 to Tifton. The Commission was under no obligation to make that comparison since the

⁴ The Tifton, GA, transmission services are commercial Stations WTIF(AM) and WOBB(FM) and noncommercial educational Station WABR(FM). We also note that Class D Station WPLH(FM) operates noncommercially on commercial Channel 276D by the Abraham Baldwin Agricultural College, Tifton, Georgia. However, we will not count this station for transmission service analysis because, pursuant to Section 73.512 of the Commission's Rules, this is a secondary service and is permitted to continue to operate only if it does not interfere with any television or commercial FM broadcast stations. We likewise do not count FM translators, which are secondary services, as transmission services. Further, we note that Station WPLH operates with an effective radiated power of only 29 watts and places a city grade signal over less than half of Tifton.

⁵ See Conway and Myrtle Beach, SC, MM Docket No. 91-75, DA 96-989, released June 21, 1996, summarized, 61 F.R. 34377 (July 2, 1996) (reallocation and change of community of license from Conway [population 9,819] to Myrtle Beach [population 24,848] granted because it equalized the number of transmission services between the communities). However, as we observed in Conway and Myrtle Beach,

... in reaching this result, we would like to point out that we are not embracing a population-ratio basis for analyzing change of community cases. Rather, we are merely recognizing that where a significantly larger community has fewer transmission services than a smaller community, a reallocation of transmission service may be warranted.

retention of an upgraded channel at Douglas was not an issue before the Commission. Moreover, from a technical standpoint the upgrading of Channel 223A on a co-channel or adjacent channel at Douglas would have been in violation of the Commissions current spacing requirements.

8. In view of the above, IT IS ORDERED, That the Petition for Reconsideration filed by Tifton Broadcasting Corporation IS DENIED.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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